

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	File No. 1:17-cr-16
	)	
Redfawn Fallis,	)	
	)	
Defendant.	)	

PARTIAL TRANSCRIPT OF  
DIGITALLY RECORDED PRELIMINARY HEARING

Taken at  
United States Courthouse  
Bismarck, North Dakota  
December 12, 2016

BEFORE THE HONORABLE CHARLES S. MILLER, JR.  
-- UNITED STATES DISTRICT COURT MAGISTRATE JUDGE --

APPEARANCES

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FOR THE UNITED STATES

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FOR THE DEFENDANT

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GOVERNMENT WITNESS

Page No.

Agent Derek Hill

Direct Examination by Mr. Hagler	5
Cross-Examination by Mr. Bellmore	16
Redirect Examination by Mr. Hagler	23

- - - - -

EXHIBITS

<u>No.</u>	<u>Description</u>	<u>Offered</u>	<u>Received</u>
1	Colorado Judgment of Conviction	7	7
2	Video of Incident	13	13
3	Photograph of Revolver	14	14
4	Photograph of Ammunition	15	15

- - - - -

Certificate of Transcriptionist - Page 24

- - - - -

1           (The above-entitled matter came before the Court, The  
2 Honorable Charles S. Miller, Jr., United States District Court  
3 Magistrate Judge, presiding, commencing at 11:00 a.m.,  
4 December 12, 2016, in the United States Courthouse, Bismarck,  
5 North Dakota. The following partial proceedings were had and  
6 made of record by digital recording in open court with the  
7 defendant present.)

8                                 - - - - -

9           THE COURT: Okay. We'll go on the record in  
10 Magistrate's Number 1-16-359, *United States of America versus*  
11 *Redfawn* -- is it Fallis, ma'am?

12           MS. FALLIS: Yes.

13           THE COURT: Okay. Ms. Fallis is present.  
14 Mr. Bellmore from the Federal -- Federal Public Defender's  
15 Office is present. Mr. Hagler is present.

16           (The following partial proceedings herein are  
17 excluded pursuant to the request of the ordering party.)

18           THE COURT: All right. United States may proceed.

19           MR. HAGLER: Thank you, Your Honor.

20           THE COURT: Oh, as another housekeeping matter, since  
21 we're recording this today, I need to have both attorneys  
22 remain seated rather than stand and then speak loudly and  
23 clearly into the mikes.

24           MR. HAGLER: Very good, Your Honor. Your Honor, the  
25 United States would call ATF Agent Derek Hill.

1                                    AGENT DEREK HILL,

2    having been first duly sworn, was examined and testified as  
3    follows:

4                                    DIRECT EXAMINATION

5    BY MR. HAGLER:

6    Q.    Agent Hill, please identify yourself for the record.

7    A.    My name is Derek Hill. I'm a special agent with the  
8    Bureau of Alcohol, Tobacco, Firearms and Explosives out of the  
9    Bismarck satellite office.

10   Q.    How long have you been a special agent with ATF?

11   A.    I've been a special agent with ATF since September of  
12   2001.

13   Q.    Did your office have occasion to become involved in an  
14   investigation regarding Redfawn Fallis earlier this year?

15   A.    Yes, we did.

16   Q.    How did you initially become involved?

17   A.    I was contacted on the night of October 27th of 2016,  
18   after Ms. Fallis was taken into custody in rural Morton County.

19   Q.    And what -- just in real general terms, what was reported  
20   to you at that time as to why they wanted ATF involved?

21   A.    It was reported to me that while she was being arrested by  
22   law enforcement in Morton County, that she had in her  
23   possession a handgun, and that handgun was fired three times  
24   during her arrest.

25   Q.    And so who was the person identified as that was arrested

1 on that occasion?

2 A. Redfawn Fallis.

3 Q. Were you familiar with Ms. Fallis prior to this incident?

4 A. Somewhat familiar with her from -- I worked in Rapid City,  
5 South Dakota, for 11 years and primarily worked the Pine Ridge  
6 Indian Reservation. I knew that that's where she was from and  
7 had some knowledge of Ms. Fallis at that time. It was Redfawn  
8 Janis that I knew her as.

9 Q. Janis spelled J-A-N-I-S?

10 A. That's correct.

11 Q. And do you see that woman in the -- in the courtroom here  
12 today in the orange seated next to Mr. Bellmore?

13 A. Yes, I do.

14 Q. What did your investigation show regarding whether the  
15 defendant has a conviction which prohibits her from possessing  
16 a firearm under federal law?

17 A. We determined that she had a 2003 conviction out of  
18 Arapahoe County District Court in Colorado for the felony --  
19 Class 6 felony for accessory to a crime. That -- that  
20 particular felony conviction out of the state of Colorado  
21 carries a punishment -- maximum punishment of greater than one  
22 year.

23 Q. Agent Hill, I'm going to hand you what has been marked as  
24 Government's Exhibit Number 1. What is that, Agent Hill?

25 A. That is a copy of the Judgment of Conviction and sentence

1 out of District Court, Arapahoe County, State of Colorado, for  
2 Redfawn Janis, also known as Redfawn Martin, for the crime of  
3 accessory to a crime, a Class 6 felony, where she was sentenced  
4 to 30 months of probation.

5 Q. Agent Hill --

6 MR. HAGLER: Well, I would offer Exhibit Number 1,  
7 Your Honor.

8 THE COURT: Mr. Bellmore?

9 MR. BELLMORE: No objection.

10 THE COURT: Exhibit 1 is received.

11 Q. (MR. HAGLER CONTINUING) Agent Hill, what is an NCIC  
12 criminal history report?

13 A. NCIC is abbreviation for the National Crime Information  
14 Center. It's a database -- a nationwide database that keeps  
15 criminal histories. The way it works is if an individual is  
16 arrested and fingerprinted, their fingerprints are sent to the  
17 FBI, where they're entered into the National Crime Information  
18 Center, and they're at times given both a state identification  
19 number for their state arrest, as well as an FBI number, where  
20 it's an individual number that will identify them for any  
21 future arrests they get.

22 So if individuals are arrested multiple times in  
23 different jurisdictions, their fingerprints are all matched to  
24 the same, so thereby they're not creating multiple FBI numbers  
25 for the same individual. So when you have an FBI number for an

1 individual that lists various arrests, you know that those  
2 fingerprints have already been examined and submitted and  
3 identified them as being the same individual.

4 Q. Even if different names have been used on different  
5 occasions, correct?

6 A. Correct.

7 Q. So in this instance, does the NCIC criminal history report  
8 for Ms. Fallis include the aliases Redfawn Janis and Redfawn  
9 Martin?

10 A. It does.

11 Q. And, therefore, that criminal history report reflects the  
12 fact that this Colorado conviction in Exhibit 1 is affiliated  
13 with Ms. Redfawn Fallis, correct?

14 A. That is correct.

15 Q. The incident that has been reported where she was  
16 possess -- in possession of the firearm, where did that take  
17 place?

18 A. That took place on Highway 1806 south of Mandan, North  
19 Dakota, in rural Morton County, within the District of North  
20 Dakota.

21 Q. Now, there were a large number of law enforcement officers  
22 present on that occasion, correct?

23 A. That's correct.

24 Q. And in general terms, what were they doing there that day?

25 A. Law enforcement that day was responsible for moving



1 protesters that had set up a camp on private property that was  
2 at this time owned by the Dakota Access Pipeline. They had set  
3 up a camp. Dakota Access Pipeline wanted them removed from the  
4 camp as they were trespassing on their property, so on this day  
5 law enforcement was in the process of evicting or moving  
6 protesters from this private property when this particular  
7 incident occurred.

8 Q. And some people were arrested that day that were not  
9 complying with law enforcement directives, is that correct?

10 A. That is correct.

11 Q. Many people that day, however, were compliant and were not  
12 arrested, correct?

13 A. That's correct.

14 Q. Regarding the defendant on this occasion, she was  
15 initially identified how? I mean, by -- what was she wearing  
16 when the officers first noted her activity?

17 A. They noted that she had a jacket on, blue jeans. She had  
18 a backpack, looked to be maybe carrying a fire extinguisher,  
19 and was also wearing a gas mask. And during this time law  
20 enforcement had a couple of armored vehicles that they were  
21 using loudspeakers to announce to the protesters at this point  
22 that they were to retreat or move back to the camps where they  
23 had originally set up camp and that they were trespassing, and  
24 so a majority of them did leave the area at that time and  
25 followed the commands or direction of law enforcement.

1 Q. You were not present there that day on this occasion, were  
2 you?

3 A. I wasn't. I was present down there, but not at this  
4 specific location when this occurred.

5 Q. As a part of your investigation with the ATF, you have  
6 reviewed law enforcement reports of other officers that were  
7 present right in that area, correct?

8 A. That's correct.

9 Q. Now, there were two -- there were two Pennington County,  
10 South Dakota, deputies that were involved, is that correct?

11 A. That's correct.

12 Q. What were their names?

13 A. Their name was Rusty Schmidt with -- S-C-H-M-I-D-T, and a  
14 Thad Schmitt, which I think was S-C-H-M-I-T-T, so both last  
15 names Schmidt.

16 Q. At some -- shortly before the shooting incident, was Ms.  
17 Fallis identified -- the female that you've described wearing  
18 the backpack, the gas mask, was she identified as a person who  
19 was to be arrested due to her conduct?

20 A. Yes, she was.

21 Q. And then who engaged in that activity specifically?

22 A. Both Deputy Schmidts from Pennington County. They -- she  
23 was identified as an individual to be arrested. They  
24 determined that she was an instigator or agitator in that she  
25 would walk up, get in the face of law enforcement and start

1 swearing at them and yelling at them. And then she would kind  
2 of get the rest of the protesters in that area fired up as  
3 well, and so rather than try to deal with her when she's got a  
4 group of protesters around her, they -- they wait until she's  
5 kind of separate from the group, and then they attempt to take  
6 them into custody.

7 Q. Okay. And so describe what happened with her that day  
8 then.

9 A. So as far as with Ms. Fallis, Deputies Schmidt ended up  
10 grabbing her in an attempt to arrest her. She ends up on --  
11 fell to the ground, was taken to the ground, and she began  
12 resisting the two -- two Pennington County deputies, along with  
13 other law enforcement that were trying to take her into  
14 custody. She locked around one of their legs with her legs and  
15 would not -- was not giving up her arms to law enforcement  
16 despite the commands that they were giving.

17 They were able to get her right arm up and were  
18 attempting to get her into flex cuffs. However, she had her  
19 fingers kind of splayed open, which makes it difficult for the  
20 flex cuffs to be placed around her wrist, so one of the  
21 deputies decided to let up some pressure on her right arm in  
22 hopes that that would allow them to get her left arm out from  
23 underneath her. As soon as they let up pressure is when the  
24 two shots were fired from underneath Ms. Fallis into the ground  
25 right at the -- right at the deputies, and then a third shot

1 was fired shortly after that.

2 Q. And then after those shots were fired, what happened?

3 A. After those shots were fired, more law enforcement joined  
4 in in controlling her, and a revolver was removed from her left  
5 hand and was turned over to law enforcement, and she was taken  
6 into custody.

7 Q. When the gun was seized, what did an officer note about  
8 any ammunition?

9 A. An officer opened the cylinder to the Ruger revolver and  
10 determined that there had been three shots fired out of it, so  
11 there were two live rounds and three spent casings still in the  
12 cylinder of the revolver at that time.

13 Q. Agent Hill, you have reviewed a video that has been marked  
14 as Government's Exhibit Number 2, correct?

15 A. That is correct.

16 Q. And it's a video of approximately two-and-a-half minutes  
17 of some of what you just described here, correct?

18 A. That's correct.

19 Q. Now, again, you were not present at that location to  
20 verify the accuracy of this video, correct?

21 A. That's correct. I was not.

22 Q. Have you -- are you aware that -- whether either of the  
23 Deputy Schmidts have reviewed the video and can attest as to  
24 whether or not it's a fair and accurate depiction of what  
25 happened that day?

1 A. Yes, Pennington County Deputy Rusty Schmidt has reviewed  
2 the video, and I guess his terms were that's spot on to what  
3 occurred down there.

4 MR. HAGLER: I would offer Government's Exhibit  
5 Number 2 at this time, Your Honor.

6 THE COURT: Mr. Bellmore?

7 MR. BELLMORE: No objection, Your Honor.

8 THE COURT: Okay. Government's Exhibit 2 is  
9 received.

10 MR. HAGLER: May I play it at this time, Your Honor?

11 THE COURT: Yes, you may.

12 (Exhibit Number 2, the video, is played in open  
13 court.)

14 MR. HAGLER: There -- there is audio with this.

15 THE CLERK: I think there should be audio on.

16 MR. HAGLER: Okay.

17 (Exhibit Number 2, the video, is again played in open  
18 court.)

19 Q. (MR. HAGLER CONTINUING) Now, Agent Schmidt (sic), as  
20 we're viewing this video here, we see someone on the ground  
21 wearing blue jeans, correct?

22 A. That's correct.

23 Q. Is that Ms. Fallis?

24 A. It is.

25 (Exhibit Number 2, the video, is again played in open

1 court.)

2 Q. (MR. HAGLER CONTINUING) All right. So, now, as you  
3 testified earlier, after the gunfire there, then the gun was  
4 seized from Ms. Fallis and taken by law enforcement, correct?

5 A. That's correct.

6 Q. Handing you what have been marked as Government's  
7 Exhibits 3 and 4, those are photographs, correct?

8 A. That is correct.

9 Q. What is Government 3?

10 A. Three is a picture of the revolver that was taken from Ms.  
11 Fallis on the day, along with the three spent casings that were  
12 in the cylinder and the two live rounds that were in the  
13 cylinder.

14 MR. HAGLER: Would offer Government's Exhibit 3, Your  
15 Honor.

16 THE COURT: Mr. Bellmore?

17 MR. BELLMORE: No objection.

18 THE COURT: Government's Exhibit 3 is received.

19 Q. (MR. HAGLER CONTINUING) And what is in Government's  
20 Exhibit 4?

21 A. Government Exhibit 4 is -- was also taken off Ms. Fallis's  
22 pockets -- taken out of her pockets at the time of her arrest.  
23 Those are what we refer to as speed strips, two speed strips  
24 containing six live rounds of ammunition each. Those are just  
25 a means of loading revolvers more efficiently, a little quicker

1 than doing it one by one with your hand.

2 MR. HAGLER: All right. The firearm displayed in --  
3 I would offer Number 4, Your Honor.

4 THE COURT: Mr. Bellmore?

5 MR. BELLMORE: No objection.

6 THE COURT: Government's Exhibit 4 is received.

7 Q. (MR. HAGLER CONTINUING) In Government's Exhibit 3, the  
8 firearm, Agent Hill, exactly what type of firearm is that?

9 A. That is a Ruger, Model LCR, .38-caliber Special revolver  
10 with a serial number of 543-47899.

11 Q. Did your investigation show that that firearm had traveled  
12 in interstate commerce at some time prior to this date?

13 A. Yes, on November 9th an interstate nexus expert for us  
14 located out of the Rapid City satellite office took a written  
15 description or a description of the gun, and he determined that  
16 that firearm was, in fact, manufactured in a state other than  
17 North Dakota. And, further, a trace request was done on the  
18 firearm to try to trace who the initial purchaser was of it,  
19 and the trace showed that the firearm was sent to a gun shop in  
20 Mobridge, South Dakota, so in order for that firearm to end up  
21 in North Dakota, it would have traveled in interstate commerce  
22 as well.

23 Q. After the incident happened, did any of the officers  
24 report any statements or comments that the defendant made  
25 relative to the gun?

1 A. A North Dakota Highway Patrolman -- last name I believe  
2 it's Buehre, Beray (ph) or something similar to that, he was  
3 part of controlling Ms. Fallis at the time of her arrest, and  
4 she -- he described her as kind of laughing it off and saying,  
5 "Everyone has a right to a firearm, and if I wanted to shoot or  
6 kill you -- you law enforcement, I would have."

7 Q. And then after she was arrested, she was, of course, going  
8 to be transported, correct?

9 A. That's correct.

10 Q. And what happened during that process?

11 A. At that time she was being -- parole and probation --  
12 North Dakota State Parole and Probation was responsible for a  
13 lot of the transports, and a parole agent and a BCI agent from  
14 the North Dakota BCI were securing her in the van, and she made  
15 the comment that she was trying to remove the gun from her  
16 pocket. And her words were, basically, you know, "Those --  
17 those fuckers tackled me, and had" -- you know, "had they not,  
18 I would have shot more of those fuckers," or something along  
19 those lines.

20 MR. HAGLER: That's all the questions I have, Your  
21 Honor.

22 THE COURT: Mr. Bellmore?

23 CROSS-EXAMINATION

24 BY MR. BELLMORE:

25 Q. Agent Hill, just to be clear, those last statements, they



1 were related to you directly through those parole agents?

2 A. They were -- they put them in their reports, a Heidebreder  
3 from North Dakota Parole and Probation and BCI Special Agent  
4 Scott Voeltz.

5 Q. And so at some stage of this investigation you're relying  
6 on notes from law enforcement agents?

7 A. It's their reports, not -- not handwritten notes. It's  
8 their actual reports.

9 Q. Correct.

10 A. Correct.

11 Q. So you didn't speak to those law enforcement officers  
12 directly?

13 A. I did not. I've read their reports.

14 Q. And, of course, you didn't hear Ms. Fallis make those  
15 statements.

16 A. That's correct.

17 Q. And you haven't heard any recordings or video --

18 A. I have not, no.

19 Q. -- involving those statements?

20 A. That's correct.

21 Q. Same goes for much of what you relayed about what happened  
22 in Morton County on October 27th, correct?

23 A. That's correct.

24 Q. You weren't present at the protest site.

25 A. I was present down there. I was not at this specific

1 location when the incident occurred.

2 Q. So when the video was played to the Court, you didn't take  
3 that video?

4 A. No. That video is all over the Internet now. That was  
5 taken by an individual who would have been on the protesters'  
6 side of the line there.

7 Q. And as per your prior comment, you don't appear anywhere  
8 in that video.

9 A. I do not.

10 Q. You mentioned that there were two particular officers from  
11 Pennington County who were assisting that day?

12 A. That's correct.

13 Q. Both had the last name of Schmidt?

14 A. Yes.

15 Q. One was Thaddeus and the other was Rusty?

16 A. Correct.

17 Q. And they were, you said, primarily responsible for seizing  
18 Ms. Fallis?

19 A. They were part of a mobile field force that was then  
20 transitioned to an arrest team, so when individuals at the  
21 front of the line identified individuals that would need to be  
22 arrested, the arrest team would then make the attempt to make  
23 the arrest.

24 Q. And they provided you with written -- written reports?

25 A. Yes, they did.

1 Q. Did you speak with them directly?

2 A. I have not.

3 Q. When Ms. Fallis was brought down to the ground by the two  
4 Pennington County officers, where was she at that moment? Was  
5 she in the line, or was she crossed the line on the law  
6 enforcement side, or was she back behind the line on the  
7 protesters' side?

8 A. They -- she was at the front of the line, and then what  
9 they do is they get them back behind the line.

10 Q. Which -- and I'm sorry. Which direction, so we're clear?

11 A. To the north they would have gone.

12 Q. On the law enforcement side.

13 A. On the law enforcement side.

14 Q. That's where they would -- that's where they would and did  
15 conduct the arrest.

16 A. Yeah. Well, the arrest began on the other side, but it --  
17 by the time she was on the ground, she was behind the law  
18 enforcement line.

19 Q. So she had moved from in front of the line, back behind  
20 the protesters, and that's where the officers --

21 A. Whether --

22 Q. -- pulled her away?

23 A. Whether she moved or the line moved forward, either way  
24 she ended up behind law enforcement at the time.

25 Q. We talked about the two officers from Pennington County.

1 were they the only two involved in taking Ms. Fallis down to  
2 the ground?

3 A. No, there were several other officers around there.

4 Q. And "several," how many do you mean specifically?

5 A. You could -- there's probably six or eight right there  
6 around her in the video.

7 Q. And if I -- you completed a written affidavit.

8 A. That's correct.

9 Q. And to your knowledge that's been filed with the Court?

10 A. Yes.

11 Q. And to be clear, that was dated November 9, 2016?

12 A. If that's what you're looking at, yes.

13 Q. And it was the indication from one of the Deputies Schmidt  
14 that the firearm was perhaps in Ms. Fallis's left hand?

15 A. Correct.

16 Q. Then when we watched the video, to be clear, we heard  
17 popping sounds?

18 A. Correct.

19 Q. And you would agree that those are perhaps the  
20 aforementioned gunshots?

21 A. Yes.

22 Q. Do -- any time in this video, do we see the firearm?

23 A. We do not. I do not see the firearm in this video, no.

24 Q. We don't see it on the ground?

25 A. No.

1 Q. And we don't see it on Ms. Fallis?

2 A. I did not see it on Ms. Fallis on this video, no.

3 Q. And do you recall seeing any officers retrieving the  
4 firearm at that point?

5 A. I'm not sure if the video shows that, but from the  
6 statements, it was -- the firearm was handed to law  
7 enforcement.

8 Q. But not clear or not present in this video?

9 A. Not in this video, no.

10 Q. In any video that you've watched?

11 A. Not that I'm aware of, no.

12 Q. The Colorado conviction from 2003 is what's being used as  
13 a predicate conviction.

14 A. That's correct.

15 Q. You mentioned that that was a Class 6 felony out of the  
16 State of Colorado?

17 A. Yes.

18 Q. You mentioned that that was punishable by over 12 months?

19 A. Yes.

20 Q. Do you recall what exactly the maximum penalty for a Class  
21 6 felony in Colorado is?

22 A. Eighteen months.

23 Q. Now, the firearm, the -- the Ruger, how was that brought  
24 before you?

25 A. As far as -- I guess I'm not --

1 Q. Did you have a chance to observe and inspect that firearm?

2 A. That firearm has been in the possession of North Dakota  
3 BCI since it was turned over to them, so I rely on written  
4 description of the firearm and the photos that were provided to  
5 me.

6 Q. Do you recall who took those photos?

7 A. Those photos, I'm not specific. I know Joe Arenz from the  
8 North Dakota BCI is the case agent on it.

9 Q. Was there an agent who had tested the firearm since it was  
10 seized?

11 A. I don't believe the firearm has been tested yet. There's  
12 testing that will be ongoing, I believe, but not --

13 Q. Not at this time.

14 A. No.

15 Q. Lastly, I asked about how many officers were directly  
16 involved in arresting Ms. Fallis, but can you tell me how many  
17 officers were present on scene at that -- at this particular  
18 protest site at that time?

19 A. One to two hundred total law enforcement down there.

20 Q. And they weren't -- obviously were doing -- we've talked  
21 about two Pennington County deputies, but there were also law  
22 enforcement officers from other agencies outside of Morton  
23 County?

24 A. Yes, there were.

25 Q. Outside of North Dakota?

1 A. Correct.

2 Q. And to your knowledge, they've provided written reports in  
3 this matter?

4 A. Those that were involved directly in this incident, it's  
5 my understanding, have provided written reports or have been  
6 interviewed by North Dakota BCI agents.

7 MR. BELLMORE: That's all the questions I have.

8 THE COURT: Mr. Hagler?

9 MR. HAGLER: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. HAGLER:

12 Q. Agent Hill, the firearm depicted in Exhibit 3, in your  
13 training and experience, does that meet the definition of a  
14 firearm under federal law?

15 A. Yes, it does.

16 MR. HAGLER: That's all I have, Your Honor.

17 THE COURT: Anything else, Mr. Bellmore?

18 MR. BELLMORE: No, Your Honor.

19 MR. HAGLER: I have no other witnesses, Your Honor.

20 (The digitally recording transcript is completed  
21 herein pursuant to the request of the ordering party.)

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